

ORIGINAL

# NEW APPLICATION



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## BEFORE THE ARIZONA CORPORATION COMMISSION

### COMMISSIONERS

KRISTIN K. MAYES, Chairman  
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Arizona Corporation Commission  
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In the Matter of the Application of  
Comcast Phone of Arizona, LLC  
for a Partial Waiver of the Public Utility  
Holding Companies and Affiliated  
Interests Rules, A.A.C. R14-2-801 *et seq.*

Docket No. T-04293A-09-\_\_\_\_\_

APPLICATION

### APPLICATION OF COMCAST PHONE OF ARIZONA, LLC FOR A PARTIAL WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS RULES

Comcast Phone of Arizona, LLC ("Comcast Phone of Arizona") respectfully requests that the Arizona Corporation Commission (the "Commission") grant a partial waiver of the Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 *et seq.* (the "Affiliated Interests Rules"). Pursuant to A.A.C. R14-2-806, the Commission has authority to waive compliance with any of the provisions of the Affiliated Interests Rules and it has granted partial waivers of the Rules for similarly situated carriers.

### BACKGROUND

Comcast Phone of Arizona is a Delaware limited liability company and is an indirect, wholly owned subsidiary of Comcast Corporation, formed under the laws of the State of Pennsylvania. Comcast Corporation is principally involved in the development, management

1 and operation of broadband cable networks and programming content. It is the largest cable  
2 company in the U.S., serving more than 24 million cable subscribers. Through various operating  
3 subsidiaries, Comcast Corporation is authorized to provide facilities-based and/or resold local  
4 exchange, interexchange and long distance services in 38 states and the District of Columbia.

5 Comcast Phone of Arizona is certificated to provide competitive telecommunications  
6 services in Arizona. In Decision No. 69408, dated April 16, 2007, the Commission granted  
7 Comcast Phone of Arizona's application for a Certificate of Convenience and Necessity  
8 ("CC&N") for authority to provide competitive resold long distance, facilities-based long  
9 distance, resold local exchange and facilities-based local exchange telecommunications services  
10 in Arizona. Comcast Phone of Arizona currently provides, in the Tucson area, wholesale and  
11 carrier telecommunications services. The revenues generated by Comcast Phone of Arizona  
12 comprise less than one percent (1%) of the overall revenues for Comcast Corporation. Based  
13 upon its operational revenues in Arizona, Comcast Phone of Arizona is considered a Class A  
14 utility as defined by the Commission's rules and is therefore subject to the Affiliated Interests  
15 Rules.<sup>1</sup> Comcast Phone of Arizona respectfully submits this Application requesting a partial  
16 waiver of the Affiliated Interests Rules and in support thereof, states the following.  
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19 <sup>1</sup> In its Application for a CC&N, Comcast Phone of Arizona stated that it would rely on the financial  
20 capability of its ultimate corporate parent, Comcast Corporation, to fund its operations in Arizona and to  
21 provide the services requested. In its 2008 Annual Report, timely filed with the Commission on or before  
22 April 15, 2009, in compliance with the Commission's rules, Comcast Phone of Arizona reported that its  
23 total intrastate revenue from its Arizona operations for 2008 was over one million, reaching Class A status.  
24 Comcast Phone of Arizona acknowledges that the Affiliated Interests Rules apply to Class A utilities and  
25 pursuant to A.A.C. R14-2-805, it is required to file an annual filing of diversification plans on or before  
26 April 15 of each year. On May 15, 2009, Comcast Phone of Arizona received permission from  
Commission Staff to file by May 20, 2009, and in lieu of that annual filing, submits this Application.

## BASIS FOR THE PARTIAL WAIVER

The Commission's Affiliated Interests Rules apply to Class A public utility companies and their affiliated interests in unregulated activities. According to the Commission, these rules are designed to implement four general principles.

First, utility funds must not be commingled with non-utility funds. Second, cross-subsidization of non-utility activities by utility ratepayers must be prohibited. Third, the financial credit of the utility must not be negatively affected by non-utility activities. Fourth, the utility and its affiliates must provide the Commission with the information necessary to carry-out its regulatory responsibilities.

Decision No. 56618. The Affiliated Interests Rules provide procedures for organizing or reorganizing a public utility holding company, identify activities that require Commission approval involving affiliated companies, provide for review of certain transactions between the utility and its affiliates, and provide reporting requirements.

Specifically, A.A.C. R14-2-803 ("Rule 803") requires a utility or affiliate to provide advance written notice of intent to organize or reorganize a public utility holding company, and to provide supporting information.<sup>2</sup> Pursuant to A.A.C. R14-2-804 ("Rule 804"), a utility must obtain Commission approval before consummating certain transactions including obtaining a financial interest in any affiliate not regulated by the Commission, guaranteeing or assuming liabilities of such affiliates, lending to any affiliate not regulated by the Commission, with the exception of certain short-term loans in an amount less than \$100,000, or using utility funds to form a subsidiary or divest itself of any established subsidiary.

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<sup>2</sup> "Reorganization" is defined as "[t]he acquisition or divestiture of a financial interest in an affiliate or a utility, or reconfiguration of an existing affiliate or utility's position in the corporate structure or the merger or consolidation of an affiliate or a utility." A.A.C. R14-2-801.

1 Pursuant to A.A.C. R14-2-805 ("Rule 805"), all public utility holding companies and  
2 Class A investor-owned utilities must file a description of diversification plans annually, and  
3 must file information on the public utility's affiliates with whom transactions occur, including,  
4 but not limited to, the name, location, a description of their relationship, the nature of their  
5 business, a brief description of their business activities, a description of the plans for the utility's  
6 subsidiaries to change business activities, enter into new business ventures or to acquire, merge  
7 or establish a new business entity, financial statements for each subsidiary, an assessment of the  
8 effect of current and planned affiliated activities on the utility's capital structure and its ability to  
9 attract capital, the bases upon which the holding company allocates plant, revenue and expenses  
10 to affiliates and the amounts involved, an explanation of the derivation of the factors, the reasons  
11 supporting the methodology and the allocation, the dollar amount transferred between the utility  
12 and each affiliate during the annual period and the purpose for each transfer, and the contracts  
13 between affiliates and the utility for various services, goods, and real property. *See* A.A.C. R14-  
14 2-805(A). After a review of the diversification plans and supporting information, the  
15 Commission may request additional information or order a hearing if it concludes that the  
16 business activities would impair the public utility's financial status. *See* A.A.C. R14-2-805(B).  
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18 Pursuant to A.A.C. R14-2-806, the Commission may waive compliance with any of the  
19 provisions of the Affiliated Interests Rules upon a finding that such waiver is in the public  
20 interest. Comcast Phone of Arizona respectfully requests that the Commission approve a partial  
21 waiver of Rules 803 and 804, and approve a limited two (2) year waiver of Rule 805 for several  
22 reasons. First, Comcast Phone of Arizona operates only in the Tucson area, a market which is  
23 highly competitive, and currently provides wholesale and carrier telecommunications services.  
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1 This, in conjunction with the Commission's existing regulatory authority and measures,  
2 effectively protect customers given the rationale for the Affiliated Interests Rules. Furthermore, if  
3 the Commission grants a partial waiver of Rules 803 and 804, similar to partial waivers granted  
4 to other utilities under similar circumstances, Comcast Phone of Arizona would still be required  
5 to obtain Commission approval for transactions or activities that have a material impact in  
6 Arizona. Second, Comcast Phone of Arizona does not possess monopoly or duopoly power in  
7 Tucson or in any other market in Arizona. Third, the operations of Comcast Phone of Arizona  
8 comprise only a very small piece, well below one percent (1%), of the operations of its ultimate  
9 parent, Comcast Corporation. Finally, compliance with such Rules would result in increased  
10 administrative burdens for Comcast Phone of Arizona and many of its affiliates, and increased  
11 administrative burdens for the Commission, with no corresponding benefits to the public.

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13 Based on the foregoing, Comcast Phone of Arizona respectfully requests a partial waiver  
14 of Rule 803. Without a partial waiver of Rule 803, Comcast Phone of Arizona and its many  
15 affiliates would be required to give notice to the Commission every time each of them  
16 "reorganized." Consistent with Commission decisions on applications for waiver under similar  
17 circumstances, the Commission should grant a partial waiver and require Comcast Phone of  
18 Arizona to file a notice of intent to enter into one of the transactions listed in Rule 803 "when a  
19 transaction is likely to result in (1) significant increased capital costs of the Arizona operations;  
20 (2) significant additional costs allocated or charged directly to the Arizona jurisdiction; or (3) a  
21 significant reduction of net income to the Arizona operations." See Decision No. 62702.  
22 Pursuant to such a partial waiver, Comcast Phone of Arizona would provide the Commission  
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1 with information necessary to carry-out its regulatory responsibilities in that the Commission  
2 could be involved with those transactions that could negatively affect Arizona.

3 Comcast Phone of Arizona respectfully requests a partial waiver of Rule 804. Without a  
4 partial waiver of Rule 804, Comcast Phone of Arizona would be required to seek Commission  
5 approval before consummating all of the transactions listed in that Rule. Consistent with  
6 Commission decisions on applications for waiver under similar circumstances, the Commission  
7 should grant a partial waiver of Rule 804, and require Comcast Phone of Arizona to seek prior  
8 approval from the Commission for transactions listed in Rule 804 that are likely to have a  
9 material adverse effect on Arizona operations. *See* Decision No. 62702.  
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11 Additionally, Comcast Phone of Arizona respectfully requests a waiver of Rule 805 for a  
12 limited two (2) year period. Without the limited waiver, the majority of the affiliate transactions  
13 required to be reported under Rule 805 would be on the national level or in connection with  
14 interests in other states, and therefore have no impact, or very little impact, in Arizona. With a  
15 limited waiver of Rule 805 for two years, the Commission would continue to be able to  
16 effectively regulate Comcast Phone of Arizona as appropriate in a competitive market.  
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18 The Commission has approved a partial waiver of the Affiliated Interests Rules for other  
19 public utilities in circumstances similar to those of Comcast Phone of Arizona, where the public  
20 interest justifies noncompliance with some of the provisions of the Affiliated Interests Rules.  
21 For example, in the 2005 Decision No. 68299, the Commission acknowledged the argument that  
22 “application of Rule 805 is unnecessary where a public utility, such as Cox Arizona: (i) operates  
23 in a competitive market; (ii) does not possess monopoly power; and (iii) generates revenues in  
24 Arizona that comprises only a small portion of its total corporate family revenues and  
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1 investments.”<sup>3</sup> The Commission previously granted Cox Arizona Telecom, LLC a partial waiver  
2 of Rules 803 and 804 requiring it to seek Commission approval for transactions or activities that  
3 have a material impact in Arizona. Comcast Phone of Arizona is similarly situated to the  
4 circumstances in that case, and in other cases. For instance, in Decision No. 62702, the  
5 Commission granted a partial waiver of the Affiliated Interests Rules for MCI WorldCom, Inc.  
6 and its affiliates,<sup>4</sup> and in Decision No. 62616, the Commission granted a partial waiver of the  
7 Rules for American Communication Services of Pima County, Inc. and ACSI Local Switched  
8 Services, Inc.

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10 RELIEF REQUESTED

11 For the foregoing reasons, Comcast Phone of Arizona respectfully requests that the  
12 Commission grant a partial waiver of Rule 803, and require Comcast Phone of Arizona to file a  
13 notice of intent to enter into one of the transactions listed in Rule 803 if it is likely to result in (1)  
14 significant increased capital costs of the Arizona operations; (2) significant additional costs  
15 allocated or charged directly to the Arizona jurisdiction; or (3) a significant reduction of net  
16 income to the Arizona operations.

17 Comcast Phone of Arizona respectfully requests that the Commission grant a partial  
18 waiver of Rule 804, and require Comcast Phone of Arizona to seek prior approval from the  
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20 <sup>3</sup> In 2008, Decision No. 70486, the Commission denied the application of Cox Arizona Telecom, LLC for an  
21 extension of the limited Rule 805 waiver in part because of changes in the telecommunications marketplace  
22 and market power since the 2005 decision. In the 2008 decision, the Commission emphasized that Cox  
23 Arizona is now the second largest facilities based telecommunications provider in Arizona, and stated that  
24 “[t]he local telecommunications market in Phoenix can reasonably be characterized as a duopoly, with  
25 Qwest and Cox Arizona as the dominant market participants.”

26 <sup>4</sup> In 2004, various operating subsidiaries of MCI, Inc. filed an application for permanent waiver of Rule 805,  
and in 2005, they filed a Notice of Withdrawal of that application.

1 Commission for transactions listed in Rule 804 that are likely to have a material adverse effect  
2 on Arizona operations.

3 Comcast Phone of Arizona respectfully requests that the Commission grant a waiver of  
4 Rule 805 for a limited period of two (2) years.

5 Respectfully submitted this 20th day of May, 2009.

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23 An original and 13 copies of the foregoing  
24 were filed this 20<sup>th</sup> day of May 2009 with:

25 Docket Control  
26 Arizona Corporation Commission  
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